United Nations A/71/301

General Assembly

Distr.: General
5 August 2016

Original: English

Seventy-first session
Item 67 (b) of the provisional agenda*
Elimination of racism, racial discrimination, xenophobia and related intolerance: comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action

Combating racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, prepared pursuant to General Assembly resolutions 68/151 and 70/140.

* A/71/150.

16-13565 (E) 230816

Please recycle

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Summary

In the present report, the Special Rapporteur discusses the important role played by national specialized bodies and national plans of action in preventing and combating racism, racial discrimination, xenophobia and related intolerance. Drawing from responses to a questionnaire sent to Member States and relevant stakeholders and other information, he highlights some examples of good practices undertaken by national specialized bodies and in national plans of action to combat racism, racial discrimination, xenophobia and related intolerance.

Contents

		Page
I.	Activities of the Special Rapporteur	3
	A. Country visits	3
	B. Other activities	3
II.	The role of national specialized bodies and national action plans in preventing and combating racism, racial discrimination, xenophobia and related intolerance	3
	A. Introduction	3
	B. Normative and legislative framework	5
	C. How national specialized bodies work to prevent and combat racism, racial discrimination, xenophobia and related intolerance	8
	D. Challenges to the work of national specialized bodies	12
	E. Examples of good practices undertaken by national specialized bodies and in national action plans to combat racism, racial discrimination, xenophobia and related intolerance	15
III.	Conclusions and recommendations	20

I. Activities of the Special Rapporteur

1. The present report is submitted pursuant to General Assembly resolutions 68/151 and 70/140.

A. Country visits

2. The Special Rapporteur expresses his gratitude to the Government of Argentina for the cooperation extended to him during his visit to the country from 16 to 23 May 2016, and to the Governments of Australia and Fiji, which have accepted his visits scheduled from 28 November to 5 December and from 7 to 12 December 2016, respectively.

3. The Special Rapporteur would like to thank the Government of Morocco for inviting him to visit the country, and hopes to honour this invitation in 2017. He also hopes to receive a positive reply to his requests to visit India, Japan, South Africa, Thailand and the United States of America before the end of his mandate.

B. Other activities

4. The activities of the Special Rapporteur between July 2015 and March 2016 are reflected in his report to the Human Rights Council at its thirty-second session (A/HRC/32/49 and Corr.1). After March 2016, the Special Rapporteur participated in the high-level thematic debate convened by the President of the General Assembly on 12 and 13 July in New York.

II. The role of national specialized bodies and national action plans in preventing and combating racism, racial discrimination, xenophobia and related intolerance

A. Introduction

5. The current mandate holder and his predecessors have noted in their various thematic and country visit reports[1] the importance and value of putting in place national plans of action and national specialized bodies for equality, which can play a fundamental role in addressing the root causes of and shaping policies aimed at combating discrimination, racism and xenophobia.

6. In the present report, the Special Rapporteur further elaborates on the important role played by national specialized bodies (or "equality bodies") and national action plans in preventing and combating racism, racial discrimination, xenophobia and related intolerance. Not only do national specialized bodies and national action plans address the root causes of discrimination in various areas, such as employment, housing, education, the justice system, law enforcement and access to different goods and services, but they also serve to promote and bring about institutional and effective change in different State and private organizations.

[1] See, in particular, the country visit reports, available from www.ohchr.org/EN/Issues/Racism/SRRacism/Pages/CountryVisits.aspx, and A/HRC/11/36, A/HRC/17/40 and A/HRC/18/44.

7. National specialized bodies have the potential to promote policy change. The Commissioner for Human Rights of the Council of Europe has noted their potential to "enhance the reach and effectiveness of public policy making by assisting policy makers to include an equality dimension into all policies and programmes and by gathering information to underpin policy making".[2] This potential can be realized through the provision of advice to legislative and executive authorities. The legal opinions, casework recommendations and research by these bodies are, in particular, important contributions to change.

8. The Special Rapporteur also believes that national specialized bodies and national action plans can be instruments of institutional change in organizations. For instance, national specialized bodies have contributed to enhancing the performance of organizations in the public and private sectors and have supported them in promoting equality, diversity and non-discrimination. There have also been several examples of national specialized bodies advising local authorities on how to enhance equality in their daily work.

9. This potential of national specialized bodies is also realized through the provision of advice to business and trade unions. The guidance and support services, survey work and the casework recommendations of these bodies have been fundamental to helping the evolution of non-discriminatory employment practices. Furthermore, national specialized bodies have the potential to enhance the wider institutional infrastructure promoting equality and combating discrimination. The Commissioner for Human Rights of the Council of Europe has also noted their potential to "achieve a multiplier effect from the resources they hold by supporting a range of stakeholder organizations to play roles in promoting equality and combating discrimination".[2]

10. The Special Rapporteur believes that engagement and partnership with civil society organizations working on issues of non-discrimination and equality is one example of good practices of national specialized bodies that need to be highlighted.

11. National specialized bodies face a number of obstacles when providing advice to different stakeholders. Lack of resources and, in some cases, limited stakeholder interest have also affected some bodies in the discharge of their mandates.

12. The Special Rapporteur believes that it is important that each State identify the challenges faced by these bodies and provide the support necessary for the work carried out by them.

13. Similarly, attention given to national action plans to supplement or strengthen existing national legislation and policy relating specifically to combating racism and xenophobia can further strengthen the role played by national specialized bodies. The Special Rapporteur believes that a review of the goals, strategies, tools and actions pursued by such bodies in carrying out their functions can maximize the impact of their work. Given that national action plans have been the focus of earlier discussions by previous mandate holders, through the scrutiny of the Committee on the Elimination of Racial Discrimination, as well as in a comprehensive publication of the Office of the United Nations High Commissioner for Human Rights (OHCHR), *Developing National Action Plans against Racial Discrimination: A Practical Guide*,[3]

[2] Council of Europe, Opinion of the Commissioner for Human Rights on national structures for promoting equality, document CommDH(2011)2.

[3] United Nations publication, Sales No. E.13.XIV.3.

more emphasis will be given to the role of national specialized bodies in the present report.

14. For the preparation of the present report, the Special Rapporteur sent to Member States, networks of national specialized bodies and other relevant stakeholders a questionnaire on their national action plans and their specialized equality bodies, seeking information on how the two mechanisms are related and work with each other and their effectiveness in combating racism, xenophobia and related discrimination. As at 31 July 2016, replies had been received from the following Member States: Bolivia (Plurinational State of), Denmark, Greece, Kyrgyzstan, Lebanon, Mexico, Mauritania, Namibia, Qatar, Saudi Arabia, Serbia, Slovakia, Slovenia, South Africa and Turkey.[4] The Special Rapporteur wishes to thank all States that sent their replies, from which he draws some of the examples mentioned in the present report, and remains interested in receiving additional information, although it may not be incorporated into the present report.

B. Normative and legislative framework

15. The Special Rapporteur notes that the creation of national specialized bodies in national legislation is encouraged, not only at the international level, but also at the regional level, in a number of legislative instruments.

1. International level

International Convention on the Elimination of All Forms of Racial Discrimination

16. In article 14 (2) of the International Convention on the Elimination of All Forms of Racial Discrimination, it is stated that: "Any State Party which makes a declaration ... may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies."

Durban Declaration and Programme of Action (2001)

17. The Special Rapporteur recalls that in paragraph 113 of the Durban Declaration, adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance on 8 September 2001, support was reaffirmed for relevant regional bodies where they exist and their establishment was encouraged. In paragraph 90 of the Programme of Action, States were urged "as appropriate, to establish, strengthen, review and reinforce the effectiveness of independent national human rights institutions, particularly on issues of racism, racial discrimination, xenophobia and related intolerance". Moreover, the Programme of Action goes beyond the creation of national specialized bodies, since States are urged in paragraph 91 thereof "to foster cooperation between these institutions and other national institutions", "to take steps to ensure that those individuals or groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance can participate fully in these institutions", and

[4] The Special Rapporteur regrets that he was not able to review all submissions owing to late replies and delays relating to translation from United Nations conference services.

"to support these institutions and similar bodies, inter alia through the publication and circulation of existing national laws and jurisprudence, and cooperation with institutions in other countries, so that knowledge can be gained of the manifestations, functions and mechanisms of these practices and the strategies designed to prevent, combat and eradicate them". More particularly, at the national level, it is recommended in paragraph 163 of the Programme of Action that for the purposes of effectively combating racism and racial discrimination, xenophobia and related intolerance in the civil, political, economic, social and cultural fields, the national legislative framework of all States expressly and specifically prohibit racial discrimination and provide effective judicial and other remedies or redress, including through the designation of national, independent, specialized bodies.

18. At the regional and international levels, States are urged in paragraph 188 of the Programme of Action "to support the activities of regional bodies or centres which combat racism, racial discrimination, xenophobia and related intolerance where they exist in their region", and the establishment of such bodies or centres is recommended in all regions where they do not exist. It is stated that: "These bodies or centres may undertake the following activities, amongst others: assess and follow up the situation of racism, racial discrimination, xenophobia and related intolerance, and of individuals or groups of individuals who are victims thereof or subject thereto; identify trends, issues and problems; collect, disseminate and exchange information, inter alia relevant to the outcome of the regional conferences and the World Conference, and build networks to these ends; highlight examples of good practices; organize awareness-raising campaigns; develop proposals, solutions and preventive measures, where possible and appropriate, through joint efforts by coordinating with the United Nations, regional organizations and States and national human rights institutions" (See A/CONF.189/12 and Corr.1, chap. I).

2. Regional level

European region

19. The European Commission against Racism and Intolerance, established in 1993 by the Council of Europe, recommended in its general policy recommendation No. 2, on specialized bodies to combat racism, xenophobia, anti-Semitism and intolerance at the national level, "to consider carefully the possibility of setting up a specialised body to combat racism, xenophobia, antisemitism and intolerance at national level, if such a body does not already exist".[5]

20. European Union directive 2000/43/EC, also known as the Race Equality Directive, prohibits discrimination on the grounds of race and ethnic origin. It covers issues of employment and occupation, vocational training, membership of employer and employee organizations, social protection, including social security and health care, education and access to goods and services that are available to the public, including housing. Pursuant to the directive, all member States must have or create a specialized body for the promotion of equal treatment on the grounds of race and ethnic origin. It is mentioned in paragraph 24 of the directive that: "protection against discrimination based on racial or ethnic origin would itself be strengthened by the existence of a body or bodies in each Member State, with

[5] European Commission against Racism and Intolerance, document CRI(97)36.

competence to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims".

Americas region

21. On 5 June 2013, the Inter-American Commission on Human Rights adopted the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance. The Convention has been signed by 11 States, but has not yet been ratified by any of them. It is provided in article 13 of the Convention that the States parties undertake, in accordance with their internal legislation, to establish or designate a national institution that shall be responsible for monitoring compliance with the Convention, and shall inform the general secretariat of the Organization of American States of this institution.

3. National level

22. The Special Rapporteur notes that some of the above-mentioned international and regional instruments have acted as driving forces for the establishment of specialized bodies at the national level. For example, following the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in September 2001 in Durban, South Africa, several such bodies were created in Latin America. The Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala was created in 2002 (see CERD/C/GTM/14-15, para. 62); the Special Secretariat for the Promotion of Racial Equality was created in 2003 in Brazil (see CERD/C/431/Add.8, para. 273); the National Council for the Prevention of Discrimination was created the same year in Mexico;[6] and a national commission against racism was created in Honduras in 2004.[7] In 2006, a department for action against discrimination was created within the office of the Ombudsman of Paraguay in accordance with the provisions of the Durban Declaration and Programme of Action (see CERD/C/PRY/1-3).

23. Similarly, national specialized bodies have been established in transposition of European Union directive 2000/43/EC. This is the case, for instance, for the National Office against Racial Discrimination in Italy,[8] which was created by a legislative decree transposing the European Union directive.

24. Similarly, the Commission for Protection against Discrimination in Bulgaria was created in 2005 in compliance with the Protection against Discrimination Act,[9] and the National Council for Combating Discrimination was established in Romania pursuant to Government Ordinance No. 137/2000 and Government Decision No. 1194/2001 on the organization and function of the National Council.[10] It is important to point out that several States have transposed the European Union directive even though they were not member States of the European Union at the

[6] Mexico, National Council for the Prevention of Discrimination, "¿Quiénes Somos?", available in Spanish from http://www.conapred.org.mx/index.php?contenido=pagina&id=38&id_opcion=15&op=15.

[7] International Labour Organization, "Honduras, Decreto Ejecutivo núm. 002-2004", database of national labour, social security and related human rights legislation (NATLEX). Available from http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=69321&p_country=HND&p_count=259 (accessed 19 August 2016).

[8] See www.equineteurope.org/National-Office-against-Racial.

[9] See www.equineteurope.org/Commission-for-Protection-Against-36.

[10] See www.equineteurope.org/National-Council-for-Combating.

date of creation of their national specialized body. Similarly, some States that do not have a national specialized body cover the issues addressed by these bodies through their more general national human rights institutions.

C. How national specialized bodies work to prevent and combat racism, racial discrimination, xenophobia and related intolerance

1. Different types, functions and activities of national specialized bodies

25. The Special Rapporteur notes that there are two main types of national specialized bodies: tribunal-type bodies, that is, impartial institutions that hear, investigate and decide on individual cases of discrimination brought before them; and promotion-type bodies whose activities are dedicated to supporting dialogue with stakeholders, raising awareness of rights, developing a knowledge base on equality and non-discrimination and providing legal advice and assistance to individual victims of discrimination.[11]

Tribunal-type bodies

26. The Special Rapporteur observes that quite a few national specialized bodies have the power to launch investigations on their own: some can act as *amicus curiae* or launch claims of *actio popularis*. These bodies can also play a more active role in enforcing legislation independently of the complaints filed with them.[12] This is notably the case for several ombudsmens' offices, including those of Argentina, Costa Rica, Paraguay and Spain. The National Counsel for the Defence of Human Rights of El Salvador and the National Institution of Human Rights of Uruguay also have this power.

27. Similarly, several national specialized bodies can also decide on the merits of a case where there is a disagreement between two parties, with or without a previous investigation and conciliation. Some bodies can also take a case directly to a civil court to enforce application of the relevant anti-discrimination legislation. Usually, national specialized bodies can choose the kind of cases they wish to litigate.[13]

Promotion-type bodies

28. The Special Rapporteur notes that most national specialized bodies are mandated to offer conciliatory services in order to reach an agreement between the plaintiff and the respondent, institution or person, thus avoiding the judicial process. If no agreement can be reached, some of these promotion-type bodies can issue warnings, reminders, advice, or recommendations and opinions addressed to the respondent about how to stop discrimination.[14]

29. National specialized bodies can also offer legal advice and assistance to victims of discrimination by informing them of and helping them to assert their rights and by documenting discrimination. This legal advice function is usually

[11] Margit Ammer and others, "Study on equality bodies set up under directives 2000/43/EC, 2004/113/EC and 2006/54/EC: synthesis report" (Human European Consultancy and Ludwig Boltzmann Institute of Human Rights, 2010) pp. 43-44.

[12] Ibid., p. 70.

[13] Ibid., p. 70.

[14] Ibid., p. 81.

strengthened by the presence of regional offices. For instance, the Austrian Ombud for Equal Treatment offers free and confidential advice and support and is present in five regional offices that provide advisory services in Austria, in Vienna, Graz, Klagenfurt, Linz and Innsbruck.

Advocacy

30. The Special Rapporteur notes that while advocacy is part of the mandate of many national specialized bodies, it is usually more prominent with the promotion-type bodies and is carried out by raising awareness and training different stakeholders in order to prevent discrimination by employers. In fact, many national specialized bodies advocate for changing the policies, procedures and practices of employers, service providers and policymakers.[15]

31. The main target groups of the advocacy work of national specialized bodies are employers, including restaurant, bar and club owners and managers, and their professional organizations, trade unions, employers' unions, public authorities and different public administrations, as well as civil society organizations, the media, police forces, legal professionals, providers of housing, property owners, professionals in the education sector and recruitment agencies.[15]

Raising awareness

32. The Special Rapporteur is pleased to note that national specialized bodies have been active in organizing events on international days, such as International Roma Day (8 April), the International Day for the Elimination of Racial Discrimination (21 March) and the International Day of the World's Indigenous Peoples (9 August), and for the International Decade for People of African Descent (2015-2024). He also notes that a number of anti-discrimination campaigns have been initiated by national specialized bodies, such as media campaigns on issues of discrimination that included television, radio and newspaper advertisements, the publication of several documents, the launch of online platforms to combat racism and discrimination and the holding of training seminars and conferences.

33. A number of bodies have dedicated communications departments or staff members assigned solely to communication tasks, including relations with the media. These teams can create communication strategies to inform the general public or specific target groups, aimed at increasing awareness of rights, developing recognition for national equality bodies and informing people who feel they have been discriminated against about available remedies.[16]

34. One such example of a positive media campaign was conducted in 2010 by the National Institute against Discrimination, Xenophobia and Racism of Argentina, which launched a programme entitled "Afro-descendants against discrimination, xenophobia and racism". The programme comprises actions to raise the profile and increase awareness of Afro-Argentine identity and culture (see A/HRC/22/4/Add.1/Rev.1, para. 28).

[15] European Network of Equality Bodies, *Equality Bodies Combating Discrimination on the Ground of Racial or Ethnic Origin* (Brussels, 2012), p. 17.

[16] European Network of Equality Bodies, *Promoting equality: overview of positive measures used by national equality bodies* (Brussels, 2008), p. 19.

Gathering data/knowledge base

35. As the Special Rapporteur emphasized in his previous report to the General Assembly (A/70/335), the collection of ethnically disaggregated data is an essential tool in gathering evidence of occurrences of racial discrimination; evaluating the situation of groups that are discriminated against; assessing the effectiveness of the measures taken; monitoring progress made; and deciding on special measures to correct the situation. Disaggregated data are key to setting evidence-based targets and designing appropriate and effective anti-discrimination legislation, policies and programmes. Therefore, it is crucial that national specialized bodies be given the mandate and the appropriate tools to collect disaggregated statistics, together with national statistical agencies. The Special Rapporteur further recalls the importance of collecting disaggregated data as one of the indicators for monitoring progress towards the Sustainable Development Goals adopted in September 2015 by the General Assembly in its resolution 70/1.

36. The Special Rapporteur notes that in the *European handbook on equality data*,[17] national specialized bodies are required to collect quantitative and qualitative information in order to be able to perform their monitoring functions. European Union directive 2000/43/EC also requires national specialized bodies to conduct "independent surveys concerning discrimination". The United Nations human rights treaty bodies have frequently called upon States to collect data on equality and discrimination, as has the Special Rapporteur, for example, in his previous report to the General Assembly.

37. The Special Rapporteur emphasizes, in particular, that data are needed to guide and support policy development and implementation. Statistics are also needed in the different judicial processes, as it is sometimes difficult, if not impossible, to prove discrimination in the absence of empirical evidence. In labour issues, statistics are needed by government agencies and businesses that want to ensure that their employment policies and practices comply with employment and non-discrimination laws. Other stakeholders would also benefit from the existence of benchmark data, such as for the labour market, against which to compare their own results. Qualitative and quantitative data are also needed for sensitizing and awareness-raising purposes. Scientific evidence on the extent and nature of discrimination can serve as a compelling, factual baseline for national discussion on equality and discrimination. Finally, equality data are needed as an indispensable resource for researchers in order to develop and implement more effective equality and anti-discriminatory policies. The Special Rapporteur is pleased to note that several national specialized bodies have a mandate to gather equality data specifically. This is the case, for example, in Norway,[18] Germany[19] and Denmark.[20]

2. Thematic coverage by national specialized bodies

38. The Special Rapporteur is aware of the wide range of issues that national specialized bodies have to address, whether through complaints or through promotional work. Some of the issues to which they are asked to attend relate to

[17] European Commission, *European handbook on equality data* (Brussels, 2007).
[18] See www.ssb.no/en/befolkning.
[19] See www.destatis.de/EN/Homepage.html.
[20] See www.dst.dk/en.

discrimination in labour/employment, the housing and education sectors and access to goods and services. These are further discussed below.

Labour/employment (public and private sector)

39. The Special Rapporteur was informed that in the workplace, the most common issues addressed by national specialized bodies are discrimination in the recruitment process and discriminatory dismissals and harassment on the grounds of racial and ethnic origin. Other issues include working conditions, promotion and unequal pay.[21]

40. The Equality Commission for Northern Ireland, in cooperation with the Equality Authority of Ireland, organized an all-island Anti-Racist Workplace Week in order to promote cultural diversity and integrated workplaces.[16] Similarly, the Federal Anti-Discrimination Agency of Germany launched a pilot project together with private and public employers on the use of anonymous applications, with only the qualifications and competencies visible, which highlighted how discrimination can manifest itself at the recruitment stage.[22]

Housing/accommodation

41. National specialized bodies can also play an active role in preventing discrimination in the housing and accommodation sectors, especially with regard to social housing. The Equality and Human Rights Commission of the United Kingdom of Great Britain and Northern Ireland has issued non-statutory guidance for social housing providers in Scotland on how to comply with the Human Rights Act 1998 of the United Kingdom, in order to avoid discrimination on the basis of immigration status, nationality or income. The guidance also encourages social housing associations and local authorities in Scotland to take the steps necessary to prevent discriminatory treatment and policies.[23]

Education (admission and language barriers)

42. The Special Rapporteur is also pleased to note that national specialized bodies are active in preventing discrimination in the education system. In Peru, for example, the Ombudsman is the competent authority when discriminatory acts are committed by public servants within the education system, both with regard to access to education and in employment matters within the Ministry and related institutions.[24] In France, the Defender of Rights (formerly the Haute Autorité de lutte contre les discriminations et pour l'égalité) proclaimed education as one of its priorities during 2008 and launched an awareness-raising campaign addressed at youth. The campaign included a blog designed to explain the risks and processes of discrimination and the measures to fight against it. The blog was also aimed at providing an opportunity for young people to combat discrimination.[16]

---

[21] European Network of Equality Bodies, *Equality Bodies Combating Discrimination on the Ground of Racial or Ethnic Origin* (Brussels, 2012), p. 21.

[22] See www.antidiskriminierungsstelle.de/EN/AboutUs/AnonymApplication/DepersonalisedApplication_node.html.

[23] See www.equalityhumanrights.com/en/advice-and-guidance/non-statutory-guidance-scottish-public-authorities.

[24] See www.defensoria.gob.pe/preguntas-frecuentes.php#a16 (in Spanish; accessed 13 June 2016).

Access to goods and services

43. National specialized bodies can play an important role in preventing discrimination in the provision of goods and services, not only in the public sector, but also by private providers. Among the issues and complaints reported, the denial of access to restaurants, clubs and hotels emerges most frequently.[21] In order to prevent discrimination regarding access to goods and services, the Anti-Discrimination Board of New South Wales, Australia, together with tourism associations, published anti-discrimination guidelines for the hotel and accommodation industry in April 2013, which inform hoteliers and restaurant and bar owners and their employees of their legal duties and responsibilities.[25]

D. Challenges to the work of national specialized bodies

44. The Special Rapporteur has found that the impact of the work of national specialized bodies can remain limited, since there are challenges either to the mandate of these bodies or to their operations. The Special Rapporteur hopes that by addressing these challenges, the work undertaken by national specialized bodies can have a more significant impact.

1. Underreporting

45. Underreporting has been identified, including by many of the national specialized bodies themselves, as a key barrier to their work. The Special Rapporteur notes that the numbers of complaints received and inquiries conducted by national specialized bodies on the grounds of racial and ethnic discrimination, which are often combined with those received and conducted on the grounds of other prohibited forms of discrimination, are low. The Special Rapporteur notes that the issue of underreporting is also manifest with regard to racist crimes and incidents owing to a perceived lack of trust in law enforcement agencies by victims and a sense of impunity. He has consistently called upon States to ensure prompt, thorough and impartial investigation into such crimes and has called for those responsible to be adequately sanctioned and for victims to be given full access to effective legal remedies (see A/HRC/26/50, A/HRC/29/47 and A/HRC/32/49 and Corr.1).

46. The Special Rapporteur firmly believes that the issue of underreporting needs to be acknowledged as an element limiting the important contribution that national specialized bodies can make to the fight against discrimination. He notes that better cooperation and development of links with civil society organizations, in particular, organizations representing minority ethnic groups and religious communities, have been identified as particularly important. In Europe, members of the European Network of Equality Bodies have been engaging with civil society organizations by organizing capacity-building events and training; targeting Bar associations and organizations working with disadvantaged groups; and creating platforms for dialogue. Civil society organizations can also offer a valuable channel of communication to minority ethnic groups and religious communities and can be a source of information for national specialized bodies, as was highlighted during the

[25] Anti-Discrimination Board of New South Wales, Australian Hotels Association (New South Wales) and Tourism Accommodation Australia, *Anti-Discrimination Guidelines for the Hotel and Accommodation Industry* (Sydney, 2013). Available from www.antidiscrimination.justice.nsw.gov.au/.

first annual colloquium on fundamental rights convened by the European Network of Equality Bodies, on the theme "Tolerance and respect: preventing and combating anti-Semitic and anti-Muslim hatred in Europe", held in Brussels on 1 and 2 October 2015.

2. Inadequate human and financial resources

47. The Special Rapporteur notes that several national specialized bodies have not been given the appropriate resources, either human or financial, to be able to carry out their mandates successfully. In addition, several such bodies have felt the consequences of the global economic and financial crisis, in which Governments have been cutting public resources across the board. This in turn has limited their capacities to accomplish the different tasks they are mandated to undertake. In Mexico, for example, the National Council for the Prevention of Discrimination mentioned in its report for 2012 that the lack of adequate resources impeded the achievement of several objectives, such as the identification and systematization of the public budget relating to the right to non-discrimination assigned to federal government agencies.[26]

3. Difficulties in gathering disaggregated data

48. Equality data are fundamental to assessing the comparative situation of groups at risk of discrimination, designing public policies that can contribute to promoting equality and assessing their implementation, and providing powerful tools against discrimination and exclusion. They shed light on the situation of groups that are at risk of discrimination but are invisible in general statistics or surveys.[27]

49. The Special Rapporteur notes, however, that one of the major challenges to the work of national specialized bodies are the restrictions to the gathering of such data within their mandates. The European Network against Racism has emphasized the necessity to "proactively collect and publish data on court cases and complaints concerning discrimination in employment and disaggregate data by ground of discrimination and field of complaint".[28] A report by the same organization on Afrophobia in Europe demonstrated that equality data collection is almost non-existent in European countries and that it is difficult to provide accurate figures, as information is collected only with regard to migration background and history, which leaves Afro-descendants born in Europe and who are citizens of a European country invisible in statistics concerning population, unemployment rates and educational attainment, and regarding other forms of potential discrimination.[29]

50. Similarly, in Latin American countries, the Special Rapporteur has noticed a lack of disaggregated data on the composition of national populations, socioeconomic indicators, the impact of social inclusion measures and the living conditions of indigenous peoples and persons of African descent, although some

[26] Mexico, National Council for the Prevention of Discrimination, "Informe anual de resultados del programa nacional para prevenir y eliminar la discriminación" (annual report on results of national programme to prevent and eliminate discrimination, 2012, in Spanish), p. 62.

[27] See www.enar-eu.org/Equality-data-collection-What-is.

[28] European Network against Racism, *Racism and Discrimination in Employment in Europe: shadow report 2012-2013* (Brussels, 2013), p. 5.

[29] European Network Against Racism, *Afrophobia in Europe: shadow report 2014-2015* (Brussels, 2016), p. 3.

countries have recently announced that they now take this issue into account in their censuses, especially with regard to the situation of persons of African descent.[30]

4. Lack of visibility

51. The Special Rapporteur notes that national specialized bodies generally suffer from a lack of visibility among the general public, which greatly limits their work. Constraints on increasing the visibility of these bodies most often relate to the fact that they are located in the capital city only and hence are not accessible to those living in rural and remote areas. This means that the bodies are not available to all groups of the population, as well as having limited opening hours. There is also a lack of information, awareness and knowledge on the part of the rights-holders concerned.

52. The Special Rapporteur wishes to make reference to a survey conducted in Europe in 2010 by the European Union Agency for Fundamental Rights regarding awareness among the public of public organizations providing support to victims of racism and discrimination. It was found that 80 per cent of respondents to the survey could not think of a single organization that could offer support to victims of discrimination — be it Government-based, an independent institution or authority, such as a national specialized body, or a non-governmental organization (NGO). Similarly, in the same survey, when given the name of a national specialized body (or an equivalent organization) in their country, 60 per cent of respondents indicated that they had never heard of it.[31]

53. Some national specialized bodies have taken steps towards increasing accessibility for the population. In Belgium, for example, the two linguistic communities agreed to unify their local anti-discrimination bodies and form a federal centre present in all regions of the country under an easily identifiable name, Unia.[32]

5. Inherent limitations of mandates

54. The Special Rapporteur notes that limitations may be inherent in the structures and mandated tasks of national specialized bodies. For instance, a tribunal-type body may not always deal with cases of multiple discrimination, but will rather focus on the most salient ground for discrimination in order to maximize the chances of reaching a concluding decision on the merits of the case, or because the body may not be mandated to cover all forms of alleged discrimination.

55. When these types of bodies reach a decision on the merits of a case, not all have the power to make their decisions binding on the parties involved, as some may only make recommendations. Furthermore, other national specialized bodies are competent to address public authorities on grounds of discrimination, but are not competent to address private stakeholders. Lastly, national specialized bodies in

[30] See, for example, the website of the National Institute of Statistics and Censuses of Argentina (www.indec.gov.ar/scn.asp).

[31] European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey, Data in Focus Report 3: Rights Awareness and Equality Bodies: strengthening the fundamental rights architecture in the EU* (Vienna, 2010), p. 13. Available from http://fra.europa.eu/eu-midis.

[32] See http://unia.be/en/about-unia.

many cases can neither condemn the party found guilty of discrimination to a fine nor award compensation payments to the victim.

56. The Special Rapporteur has also noticed that, where they exist, national plans of action to combat racism, racial discrimination, xenophobia and related intolerance do not necessarily create national specialized equality bodies. Similarly, when these bodies are already in existence, national action plans rarely involve them in their activities. In this regard, Member States should take into account the unique potential of national specialized bodies as instruments of implementation of the different activities described in national plans of action.

E. Examples of work undertaken by national specialized bodies and in national action plans to combat racism, racial discrimination, xenophobia and related intolerance

1. International and regional levels

57. The Anti-Racial Discrimination Section in OHCHR has developed guidelines on national human rights action plans, as well as guidelines for national plans of action for human rights education. It has provided guidance to several States on how to develop national action plans against racial discrimination, has followed up on the implementation of various such plans and has provided technical assistance to States that are currently developing, implementing or considering the development of such a plan.[33] Similarly, the Section has engaged in partnerships with national specialized bodies and with regional and international bodies working on the issues of equality, racism, racial discrimination, xenophobia and related intolerance.

58. The European Network of Equality Bodies brings together 45 organizations from 33 European countries with the task of counteracting discrimination across the range of grounds, including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation. The Network aims to promote equality in Europe by supporting and enabling the work of national specialized bodies so that they can be valuable catalysts for more equal societies.[34]

59. An interesting initiative is shown in a case study from 2010, in which the European Network of Equality Bodies working group on dynamic interpretation sent real-life cases to equality bodies in order to analyse how European Union directive 2000/43/EC and national legislation are applied in practice. This resulted in a comparison of the different national legal solutions to the cases in order to achieve a number of objectives: identifying patterns in the way in which the directive has been implemented and applied in national laws; identifying potential gaps in protection or areas requiring legal clarification in the directive; and identifying potential and existing legislative gaps in national legal systems.[35] As a result of the study, the working group sent a recommendation to members of the Network relating to discrimination in the housing sector on the grounds of Roma origin.

---

[33] See *Developing National Action Plans against Racial Discrimination: A Practical Guide* (United Nations publication, Sales No. E.13.XIV.3).

[34] See www.equineteurope.org/-About-us-.

[35] European Network of Equality Bodies, *Dynamic Interpretation: European Anti-Discrimination Law in Practice V* (Brussels, 2010), p. 5.

60. The Ibero-American Network of Agencies and Organizations against Discrimination is an association of like-minded agencies and bodies designed to build links and inter-agency coordination between government organizations, regional and international agencies, civil society organizations and academic institutions. The objective of the Network is to fight all forms of discrimination in the public and private sectors, at both the national and international levels, through the exchange of information and experiences, the production of knowledge and actions of prevention and promotion among its members.[36]

61. The Ibero-American Network of Agencies and Organizations against Discrimination was founded in 2007 at an Ibero-American meeting on social development, democracy and non-discrimination held by the National Council for the Prevention of Discrimination in Mexico. It is composed of 39 members from 18 countries (21 government agencies, 10 national and international non-governmental organizations, 3 academic institutions, 3 regional agencies and 2 international agencies).[36] The Network is active in all Latin American countries and in Spain and Portugal. Its unique characteristic is that its membership comprises government agencies to combat racism and racial discrimination and national specialized bodies and civil society organizations active in this area. Its secretariat changes regularly through its general assemblies.

62. There are no other regional networks of specialized bodies apart from those mentioned above, although some individual countries have national specialized bodies.

2. National level

63. The Special Rapporteur would like to bring to the attention of Member States some concrete examples of measures and activities undertaken by national specialized bodies, drawing from the responses he received to the questionnaire mentioned in paragraph 14 above, as well as other information.

64. The Plurinational State of Bolivia indicated that, pursuant to Act No. 045 of 8 October 2010 against racism and all forms of discrimination and Supreme Decree No. 0762 of 5 January 2011, a national action plan to combat racism and all forms of discrimination was adopted in February 2012. The plan contains policies, strategies and programmes covering the following areas: national planning and public investment targeting minority populations; access to housing programmes and employment for populations who have suffered racism and discrimination; equal access to the justice system; participation of populations who have suffered racism and discrimination in political and social life; health-care and education services; affirmative action in the military for native indigenous and peasant peoples; research on racism and discrimination; and a system for receiving complaints and registering and monitoring administrative and judicial proceedings in cases of racism and all forms of discrimination.

65. Furthermore, the Act against racism and all forms of discrimination and its regulatory decree provide for the creation of the National Committee against Racism and All Forms of Discrimination, which is responsible for promoting,

[36] See website of the Ibero-American Network of Agencies and Organizations against Discrimination, "Acerca de la RIOOD", available from www.redriood.org/acerca-de-la-riood/ (in Spanish, accessed 9 June 2016).

designing and implementing comprehensive policies and legislation to combat racism and all forms of discrimination. The membership of the National Committee comprises State institutions; social organizations; rural indigenous organizations; intercultural and Afro-Bolivian communities; organizations defending the rights of women, young people, children and adolescents, persons with disabilities and vulnerable segments of society; and other human rights institutions and organizations and civil society organizations, as well as the Office of the United Nations High Commissioner for Human Rights in the Plurinational State of Bolivia and the Office of the Ombudsman of the Plurinational State of Bolivia, which act as observers and provide technical support.

66. Denmark informed the Special Rapporteur that although it does not currently have an overarching national action plan, it has developed two specialized action plans, one in 2003 to promote equal treatment and diversity and combat racism, and another in 2010 to promote ethnic equal treatment. Denmark indicated that its Constitution guarantees "full enjoyment of civil and political rights" to all persons and that the Criminal Code penalizes discriminatory or threatening communications against particular identity groups, and a discriminatory motive is an aggravating circumstance. Denmark also submitted information on its national specialized bodies: the Board of Equal Treatment, a "predominantly quasi-judicial body" that receives complaints from parties alleging discrimination, makes determinations regarding those complaints and may go to court on behalf of the complainant if necessary; and the Danish Institute for Human Rights, a "promotion-type" body that promotes equal treatment through monitoring activities, recommendations and independent projects.

67. Greece informed the Special Rapporteur that in 2015 it established the National Council against Racism and Intolerance in order to develop a national action plan against racism and intolerance and coordinate the relevant actors to implement that strategy. Participants in the National Council include the National Commission for Human Rights, the Racist Violence Recording Network (with the participation of 36 NGOs), the Office of the United Nations High Commissioner for Refugees and the Ombudsman of Greece. It held its inaugural meeting on 20 April 2016, when it "started planning strategic objectives and set short and midterm goals". This example was highlighted by the Special Rapporteur in his report on his visit to Greece in 2015 (see A/HRC/32/49/Add.1).

68. Namibia informed the Special Rapporteur that the Office of the Ombudsman was charged with the development of a national human rights action plan pursuant to the Vienna Declaration and Programme of Action. Development of the action plan began in 2009, and the draft was submitted to the Cabinet on 30 September 2014. The action plan enumerates seven guiding principles for implementation: participation, accountability, transparency, non-discrimination, human dignity, empowerment and rule of law. Its focus is on seven specific human rights that required strengthening: health, education, water and sanitation, housing, land, access to justice and non-discrimination. For each area, shortcomings were identified, key intervention areas were developed and government ministries were assigned to lead each intervention.

69. Saudi Arabia informed the Special Rapporteur that Royal Decree No. M/12 of 19 August 1997 provided for accession to the International Convention on the Elimination of All Forms of Racial Discrimination and for the implementation of its

provisions in a manner consistent with the Islamic sharia. The legislation guarantees equality and criminalizes racial discrimination.

70. Serbia informed the Special Rapporteur about its several action plans, one of which is the Action Plan for the Implementation of the Strategy for Prevention and Protection against Discrimination for the period 2014-2018. The Strategy for Social Inclusion of Roma in the Republic of Serbia for 2016-2025 targets discrimination against Serbia's Roma population. The national employment action plan for 2016 also addresses employment issues for the Roma population. Additionally, the action plan adopted in 2016 for chapter 23 of the acquis communautaire of the European Union, "Judiciary and fundamental rights", lays out amendments to the Criminal Code that would increase its effectiveness in fighting racism and xenophobia by, among other improvements, increasing "detection, discovery and arrest of the perpetrators of crimes involving violence caused by personal capacity towards national minorities". It also envisages "strengthening the capacity of the Commissioner for Protection of Equality", an equality official who receives and reports complaints of violations of the Law on the Prohibition of Discrimination. The Action Plan for Exercising the Rights of National Minorities, adopted in 2016, outlines amendments to the Law on the Protection of the Rights and Freedoms of National Minorities to improve access to public employment opportunities.

71. Slovakia reported on its national action plan on preventing and combating racism, xenophobia, anti-Semitism and other forms of intolerance for the period 2016-2018. The action plan is aimed at preventing prejudices, stereotyping and hate speech on the basis of national, racial, religious, ethnic or similar intolerance, as well as preventing the spread of attitudes and actions promoting racism, xenophobia and other forms of intolerance. It sets goals and deadlines for tasks to be performed by individual ministries and State institutions. The government committee on preventing and countering racism, xenophobia, anti-Semitism and other forms of intolerance, which is composed of the representatives of various State departments, NGOs and academic experts, oversees implementation of the national action plan.

72. Slovenia indicated that in the Protection against Discrimination Act of 2016, a national specialized body, the Advocate of the Principle of Equality, was established. The Advocate is tasked with "protection against discrimination based on any ground". Its functions include assisting victims of discrimination with legal cases, conducting inspections, gathering data and information, publishing reports and recommendations, conducting campaigns to raise awareness and communicating with interested European Union bodies.

73. South Africa informed the Special Rapporteur that although it does not yet have a national action plan against racism, racial discrimination, xenophobia and related intolerance, a draft was launched and released for public consultation in 2016. The South African Human Rights Commission, created under chapter 9 of the Constitution, is making an effort to expedite finalization of the draft national action plan. The national action plan would strengthen South Africa's existing policy on xenophobia by consolidating strategies, assigning roles to different bodies, establishing a rapid response team to identify cases of discrimination and specifically targeting racism, rather than discrimination generally. The national action plan would also pool resources, intensify efforts to fight racism in targeted sectors and promote education and diversity training. More generally, the national action plan would provide a framework, set priorities and develop mechanisms to

fight racism. Lastly, it would create hate crime legislation for certain crimes "based on one's identity".

74. Turkey informed the Special Rapporteur that article 10 of its Constitution prohibits discrimination and provides for "special measures" to protect particularly disadvantaged groups. Civil and criminal law also prohibit discrimination in specific sectors. The Law on Anti-Discrimination and Equality establishes an anti-discrimination and equality board to address complaints regarding discrimination. The Law applies to public and private actors and foresees 11 types of discrimination under the titles of "segregation", "ordering discrimination and implementing such orders", "multiple discrimination", "direct discrimination", "indirect discrimination", "workplace mobbing", "victimizing", "failing to make reasonable arrangements", "hate speech", "harassment" and "discrimination based on assumptions". Social and educational efforts also contribute to the fight against discrimination.

75. In Albania, the creation of the Commissioner for Protection from Discrimination by Law No. 10 221[37] has enabled victims to lodge a complaint in four different languages, including minority languages: English, Albanian, Greek and Romani.[38] Similarly, the website of the Office of the Ombudsman of the Plurinational State of Bolivia has been translated into four languages (Spanish, Guarani, Quechua and Aymara),[39] and the website of the Office of the Ombudsman of Peru has been translated into Quechua.[40]

76. In Romania, the National Council for Combating Discrimination is unique; its activities address 14 grounds for discrimination. Its criteria include employment, nationality, language, social category, the presence of a chronic non-infectious disease or HIV infection, being part of a disfavoured category and any other grounds for discrimination aimed at or with the result of impairing or nullifying the recognition, enjoyment or exercise, in conditions of equality, of human rights and fundamental freedoms or of rights granted by law in the political, economic, social, cultural or other fields of public life.[41]

77. In Mexico, the Instituto Nelson Mandela was created following the proclamation of the International Decade for People of African Descent to carry out awareness-raising campaigns and training on equality and non-discrimination for the general public and civil servants.[42] In addition, an agreement was reached between the Secretary of the Civil Service and the National Council for the Prevention of Discrimination that ensures the principle of equality and non-discrimination within the code of conduct for federal civil servants while performing their duties. Also in Mexico, the National Programme for Equality and Non-Discrimination (2014-2018) sets targets for every public institution to review, incorporate, adapt and strengthen their norms and practices so that regulatory and

[37] See website of the Commissioner for Protection from Discrimination, www.kmd.al/.
[38] See http://minorityrights.org/country/albania/.
[39] See www.defensoria.gob.bo/.
[40] See www.defensoria.gob.pe/.
[41] See www.equineteurope.org/National-Council-for-Combating.
[42] See website of the Ibero-American Network of Agencies and Organizations against Discrimination, "Prácticas y propuestas antidiscriminatorias" (in Spanish, accessed 20 June 2016).

administrative provisions that facilitate, encourage or tolerate discriminatory practices are removed.[43]

78. In Argentina, the National Institute against Discrimination, Xenophobia and Racism and the federal council for anti-discriminatory public policies held the second Youth Federal Parliament in 2015. In 2009, the National Institute had launched the Observatory of Discrimination in Football, an innovative initiative to prevent, analyse and combat discriminatory situations that may arise in football.

79. In Malta, the National Action Plan against Racism and Xenophobia[44] (a three-year plan developed in 2010) had the objective of developing anti-racist initiatives, such as advocacy actions, capacity-building, research activities and grass-roots initiatives.

80. In Ireland, the National Action Plan against Racism 2005-2008[45] was launched in January 2005 by the Prime Minister and the Minister for Justice, Equality and Law Reform. The Plan provided strategic direction to combat racism and promote a more inclusive, intercultural society in Ireland. The development of the Plan was preceded by a 12-month consultation process involving a wide range of stakeholders, including the Government, social partners and civil society. The launch of the Plan was in fulfilment of a commitment given at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Ireland was one of the first States in the world to establish a national action plan against racism and one of the few in the European Union to do so.

81. On 31 December 2014, in his New Year's speech to the French people, the President of France declared combating racism and anti-Semitism a major national cause for 2015,[46] which resulted in the creation of the 2015-2017 national action plan to combat racism and anti-Semitism.

82. Lastly, in Ukraine, an inter-agency working group to combat xenophobia and ethnic and racial intolerance, which brought together a broad range of relevant actors, was set up in 2008 under the Cabinet of Ministers to tackle these issues in an integrated manner. It adopted a plan of action to combat xenophobia and racial and ethnic discrimination in Ukrainian society for 2008-2009, and a similar plan for 2010-2012.[47]

III. Conclusions and recommendations

83. **The Special Rapporteur welcomes the efforts made at the international, regional and national levels to establish national specialized bodies and develop national action plans for the elimination of racism, racial discrimination, xenophobia and related intolerance.**

---

[43] See www.conapred.org.mx/index.php?contenido=noticias&id=4835&id_opcion=108&op=214 (in Spanish, accessed 21 June 2016).

[44] Equality Research Consortium, "National Action Plan Against Racism Malta", December 2010.

[45] See www.justice.ie/en/JELR/NPARen.pdf/Files/NPARen.pdf.

[46] France, Délégation interministérielle à la lutte contre le racisme et l'antisémitisme, *Mobilizing France against racism and anti-Semitism: 2015-2017 action plan* (Paris, 2015). Available from www.gouvernement.fr.

[47] See European Commission against Racism and Intolerance, report on Ukraine (fourth monitoring cycle), document CRI(2012)6, p. 7.

84. The Special Rapporteur encourages States that have not done so to seriously consider developing a comprehensive national plan of action against racism, racial discrimination, xenophobia and related intolerance, especially in the global context of a growing rise of xenophobic sentiments in a prolonged migration crisis. In this regard, he recalls the recommendations made in his most recent report to the Human Rights Council (A/HRC/32/50) in order to combat racism and xenophobia.

85. The Special Rapporteur calls upon States, when developing national action plans against racism, racial discrimination, xenophobia and related intolerance, to establish a national specialized body as the key implementing agency. States should note the unique potential of such bodies in combating racism, xenophobia and other forms of discrimination, and should make every effort to link their national action plans and their activities with the specialized body. In this regard, he calls for more coordination between the objectives of national action plans and the reinforcement of the mandate and resources of national specialized bodies.

86. The Special Rapporteur also calls upon States, when establishing a national specialized body against racism and other forms of discrimination, to distinguish it from the general national human rights institution, but to do so in compliance with the Paris Principles of iadependence and impartiality. Whenever possible, this national specialized body should be mandated to ensure follow-up of the objectives of the national plan of action and the development of new plans.

87. In this regard, the Special Rapporteur recalls, as a good example, general policy recommendation No. 2 of the European Commission against Racism and Intolerance, on specialized bodies to combat racism, xenophobia, anti-Semitism and intolerance at the national level, especially chapter C of the appendix thereto, which states the functions and responsibilities of such bodies, in particular: to work towards the elimination of the various forms of discrimination; to monitor the content and effect of legislation with the aim of combating racism; to advise the legislative and executive authorities with a view to improving regulations and practice in the relevant fields; to provide assistance to victims, including legal aid, in order to secure their rights before institutions and the courts; to hear and consider complaints and petitions concerning specific cases and to seek settlements; to issue advice on standards of anti-discriminatory practice in areas of their application; to contribute to the training of key groups; and to promote the awareness of the general public on issues of discrimination and to produce and publish pertinent information and documents. The Special Rapporteur calls upon States to take into account such provisions when creating national specialized bodies.

88. Finally, the Special Rapporteur recommends that States ensure that national specialized bodies are given the appropriate mandates and resources, both human and financial, to be able to carry out their functions to their full potential, in particular with regard to the challenges reported above.